

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**R.G., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Las Vegas, NV, Employer**

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**Docket No. 07-2396  
Issued: March 20, 2008**

*Appearances:*  
*James Wright*, for the appellant  
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On September 24, 2007 appellant filed a timely appeal from the June 21, 2007 nonmerit decision of the Office of Workers' Compensation Programs, which denied his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review this nonmerit denial. The Board has no jurisdiction to review the Office's March 31 and June 20, 2006 merit decisions denying appellant's claim for compensation, as he filed his appeal to the Board more than one year after the dates of those decisions.

**ISSUE**

The issue is whether the Office properly denied appellant's June 13, 2007 request for reconsideration.

**FACTUAL HISTORY**

On November 25, 2005 appellant, then a 47-year-old general clerk, filed a claim alleging that his bilateral carpal tunnel syndrome, ulnar nerve pain and stress were a result of his federal employment: "I returned to [the Las Vegas Post Office] at the end of May as an Expediter on the

platforms. I started to become very irritated and was having pain in both hands and right forearm area. Stress became a factor along with the pain.”<sup>1</sup>

The Office asked appellant for additional information, including a comprehensive medical report from his treating physician that described his symptoms, the results of examination and tests, his diagnosis, his treatment, the effect of treatment and the doctor’s opinion, with medical reasons, on the cause of his condition. “Specifically,” the Office stated, “if your doctor feels that exposure or incidents in your federal employment contributed to your condition, an explanation of how such exposure contributed should be provided.”

After appellant offered a statement, the Office again requested that he submit a comprehensive medical opinion addressing the issue of causal relationship: “This information is crucial to the consideration of your claim. You may wish to provide your treating physician with a copy of this letter.” Appellant offered another statement.

In a decision dated March 31, 2006, the Office denied appellant’s claim. The Office found that the evidence of file appeared to support that the claimed events occurred as alleged, but there was no medical opinion providing a diagnosis that could be connected to the events.

Appellant requested reconsideration. He submitted a functional capacity evaluation, a neurological impression of bilateral carpal tunnel syndrome, rule out cervical radiculopathy, and an April 13, 2006 report from Dr. Carl N. Williams, Jr., a hand surgeon, who reported that he had treated appellant in the past for bilateral carpal tunnel syndrome and ulnar nerve compression. Dr. Williams reported that an electromyogram showed that appellant once again had bilateral carpal tunnel syndrome; his symptoms were back and needed to be addressed. He requested approval for carpal tunnel surgery.

In a decision dated June 20, 2006, the Office reviewed the merits of appellant’s case and denied modification of its March 31, 2006 decision. The Office found that Dr. Williams did not clearly state that appellant’s condition was connected with or causally related to his work activities since May 2005. The medical evidence did not establish an emotional or cardiac condition causally related to the alleged stress and anxiety of his work activities.

On June 13, 2007 appellant, through his representative, requested reconsideration. He stated that he disagreed with the Office’s June 20, 2006 decision and asserted that the Office should grant reconsideration for the following reasons: (1) the decision involved a clearly erroneous interpretation of material fact or law; (2) there are legal arguments not previously considered by the Office; and (3) there is relevant and pertinent new evidence not previously considered by the Office. Appellant explained that he was in the process of having a medical evaluation report completed and submitted as medical evidence. He requested additional time to submit this evidence and legal arguments “that will substantiate the claim.”

In a decision dated June 21, 2007, the Office denied appellant’s request for reconsideration.

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<sup>1</sup> Under OWCP File No. 131210344, the Office accepted bilateral carpal tunnel syndrome and bilateral ulnar neuropathy with multiple surgical releases performed from 2000 to 2003.

## LEGAL PRECEDENT

The Federal Employees' Compensation Act provides that the Office may review an award for or against payment of compensation at any time on its own motion or upon application.<sup>2</sup> The employee shall exercise this right through a request to the district Office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."<sup>3</sup>

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.<sup>4</sup>

An application for reconsideration must be sent within one year of the date of the Office decision for which review is sought.<sup>5</sup> A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.<sup>6</sup>

## ANALYSIS

Appellant filed his June 13, 2007 request for reconsideration within one year of the Office's June 20, 2006 merit decision denying his claim for compensation. His request is therefore timely. The question before the Board is whether this request meets at least one of the standards for obtaining a merit review of his case.

The Board finds that appellant's request meets none of the applicable standards. Appellant did not show that the Office erroneously applied or interpreted a specific point of law. He did not advance a relevant legal argument not previously considered by the Office and he submitted no materials constituting relevant and pertinent new evidence not previously considered by the Office.

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<sup>2</sup> 5 U.S.C. § 8128(a).

<sup>3</sup> 20 C.F.R. § 10.605 (1999).

<sup>4</sup> *Id.* at § 10.606.

<sup>5</sup> *Id.* at § 10.607(a).

<sup>6</sup> *Id.* at § 10.608.

Appellant disagreed with the Office's decision, but only repeated the legal standards he had to meet in order to obtain a merit review of his case. He alleged that the Office's decision involved a clearly erroneous interpretation of material fact or law, but he did not specify any error and he made no showing. Appellant alleged that there were legal arguments not previously considered by the Office, but he did not advance any arguments. He alleged that "there is relevant and pertinent new evidence" not previously considered by the Office, but he did not submit that evidence. Appellant's June 13, 2007 request for reconsideration was not, in fact, supported by any new legal argument or new evidence. Lacking any specific argument or evidence, it is insufficient on its face. Because appellant's request does not meet at least one of the standards for obtaining a merit review of his case, the Board will affirm the Office's June 21, 2007 decision denying reconsideration.<sup>7</sup>

**CONCLUSION**

The Board finds that the Office properly denied appellant's June 13, 2007 request for reconsideration.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 21, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 20, 2008  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>7</sup> The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c). The Board therefore has no jurisdiction to review the new evidence and legal argument appellant submitted on appeal. This evidence and argument was not before the Office when it issued its June 21, 2007 decision to deny his request for reconsideration.